IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No. 348 of 1995
Date of decision 8 .8 .2007

The Commissioner of Income Tax, Patiala .. Appellant

Versus

M/s Morinda Coop. Sugar Mills .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Yogesh Putney, Advocate for the revenue
Mr. M.R.Sharma, Advocate for the assessee.

M.M.Kumar, J.

This order would dispose of ITR Nos. 335 and 348 of 1995. The revenue has challenged order dated 7.7.1993 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for brevity 'the Tribunal') in ITA No.27/Chandi/89 for the assessment year 1982-83. At the instance of the Revenue, the Tribunal in exercise of powers under Section 256 (1) of the Income Tax Act,1961 (for brevity 'the Act') has referred the following question of law for the determination of this Court:

> " Whether on the facts and in the circumstances of the case the ITAT was right in law in holding the view of the CIT(A) that ex-gratia payment @ 11.67% should be allowed as the payment was made in the interest of business ?"

Learned counsel for the assessee has submitted that the questions raised in this reference was subject matter of consideration of a Division Bench of this Court in ITR No.15 of 1994 (Commissioner of Income Tax (Central),Ludhiana v. Punjab Concast Steels Ltd., Ludhiana) which answered the question against the Revenue vide its order dated 29.11.2006. This Court has accepted the view taken by Delhi High Court in the case of

Commissioner of Income Tax v. Autopins (India) (1991) 192 ITR 161, Madras High Court in the case of Commissioner of Income Tax v. Bhawani Mills Ltd. (1999) 237 ITR 855 and Orissa High Court in the case of Commissioner of Income Tax v. Orissa Industries Ltd. (1993) 203 ITR 449. It was concluded that Section 36((1)(ii) of the Act is not applicable to payments to which Bonus Act does not apply and allowability of such deductions has to be considered with reference to Section 37 of the Act. Therefore, the question raised has to be answered against the Revenue.

In view of the above, the question is answered against the Revenue and in favour of the assessee.

Both the references stands disposed of. Photo copy of this order be placed on the file of connected case.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

8 .8.2007
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